

**BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: JULY 14, 2004 Division: TDC

Bulk Item: Yes X No      Department:                                     

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**AGENDA ITEM WORDING:**

Approval to modify and extend agreement with the City of Key West for beach cleaning services and seaweed cleanup by Robbies Marine for Smathers and Rest Beach in an amount not to exceed \$138,140 per year for cleaning and maintenance and \$45,000 per year for seaweed cleanup, DAC I, Third Penny Resources.

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**ITEM BACKGROUND:**

DAC I approved same at their meeting of May 26, 2004.

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**PREVIOUS REVELANT BOCC ACTION:**

BOCC approved original Agreement at their meeting of May 26, 2004.

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**CONTRACT/AGREEMENT CHANGES:**

Modify scope of services and payment; extend through September 30, 2005.

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**STAFF RECOMMENDATIONS:**

Approval

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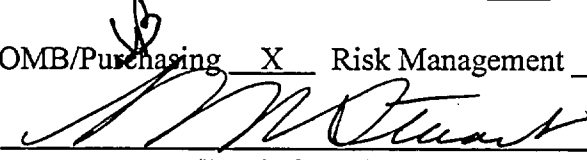
**TOTAL COST:** \$183,140 p.year **BUDGETED:** Yes X No     

**COST TO COUNTY:** \$183,140 p.year **SOURCE OF FUNDS:** TDC

**REVENUE PRODUCING:** Yes X No      **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**DIVISION DIRECTOR APPROVAL:**

  
(Lynda Stuart)

**DOCUMENTATION:** Included X To Follow      Not Required     

**DISPOSITION:**                                      **AGENDA ITEM #** D1

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

**CONTRACT SUMMARY**

Contract with: City of Key West Contract #             
 Effective Date: 7/14/04 10/1/04  
 Expiration Date: 9/30/05  
 Contract Purpose/Description:           

Approval to modify and extend agreement with the City of Key West for beach cleaning services and seaweed cleanup by Robbies Marine for Smathers and Rest Beach in an amount not to exceed \$138,140 per year for cleaning and maintenance and \$45,000 per year for seaweed cleanup, DAC I, Third Penny Resources.

Contract Manager: Maxine Pacini 3523 TDC # 3  
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 7/14/04 Agenda Deadline: 6/29/04

**CONTRACT COSTS**

Total Dollar Value of Contract: \$ 183,140 Current Year Portion: \$ 138,140  
 Budgeted? Yes ☒ No ☐ Account Codes:             
 Grant: \$            117-77040-530460-T47M-422-X-530460  
 County Match: \$                                                       

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$           /yr For:             
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>6/17/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>6/17/04</u>
Risk Management	<u>6/21/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Bill Graham</u>	<u>6/21/04</u>
O.M.B./Purchasing	<u>          </u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Sheela A. Burke</u>	<u>6/21/04</u>
County Attorney	<u>6/15/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>S. Hutton</u>	<u>6/15/04</u>

Comments:

## **ADDENDUM TO INTERLOCAL AGREEMENT**

THIS ADDENDUM to agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 2004, is entered into by and between the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, and the City of Key West:

WHEREAS, there was a contract entered into on September 20, 2001, between the parties, awarding \$138,140 to the City of Key West for the beach cleaning and maintenance services for Smathers and Rest Beach, and

WHEREAS, it has become necessary to modify and extend the contract for an additional period of time; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree to the amended agreement as follows:

1. Contract period as outlined in Paragraph 1 shall be extended to September 30, 2005.

2. Scope of Agreement outlined in paragraph 2 shall read as follows: The City shall provide beach cleaning and maintenance services for Smathers and Rest Beach. The City may fulfill this obligation through use of its own employees and/or by contracting with an independent contractor, in which case the City shall require sufficient professional licensure to meet any state or federal requirements, insurance coverage and hold harmless clauses protecting the County against any and all claims arising under this contract or any sub-contract, and City shall have sole responsibility for subcontract specifications and any oversight over the work product. The City recognizes that its undertaking responsibility for beach cleaning and maintenance services replaces those services for which the County previously contracted for Smathers Beach from waters edge (the mean water line) to the edge of the bike/pedestrian walk (approximately 3,000 feet beach frontage) and up to the end of the wall on the eastern most portion, seven days a week; and for C.B Harvey/Rest Beach (approximately 800 feet beach frontage), seven days a week, including but not limited to: trash and debris removal, management of environmental hazards, erosion control and beach repair, coordination of all activities with the Florida Department of Environmental Protection, and notices to appropriate state agencies regarding any sea turtle nesting activity. City shall provide for seaweed clean up from below the high water mark and around the groins for between the dates of October 1, 2004 and September 30, 2005.

3. Amount of agreement and payment outlined in paragraph 3 shall read as follows: The county shall provide an amount not to exceed \$138,140 per year in reimbursement for cleaning and maintenance services for Smathers and Rest Beach, and an amount not to exceed \$45,000 per year (commencing October 1, 2004 through September 30, 2005) for seaweed clean up from below the high water mark and around the groins. Payment shall be made in twelve (12) installments on a monthly basis. Payment will be made directly to City or contractor. If payment is made directly to City a cover letter must accompany a copy of paid invoice from the City showing that contractor has sufficiently performed scope of services. If payment is made directly to

contractor, City should submit original invoice with documentation from City that scope of services has been sufficiently performed by the contractor. The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award. Payment for expenditures permissible by law and County policies shall be made through reimbursement to City upon presentation of invoices, cancelled checks and other documentation necessary to support a claim for reimbursement. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC.

4. The remaining provisions of the contract dated September 20, 2001, remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

(SEAL)  
ATTEST:

CITY OF KEY WEST

\_\_\_\_\_  
City Clerk

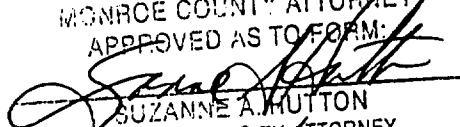
\_\_\_\_\_  
Mayor of City of Key West

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY  
COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
  
SUZANNE A. MUTTON  
ASSISTANT COUNTY ATTORNEY  
6/15/04



**John Jones**  
Assistant City Manager

## THE CITY OF KEY WEST

P.O. BOX 1409  
KEY WEST, FL 33041-1409

525 Angela Street  
(305) 292-8100  
FAX 292-8234

The Florida Keys & Key West  
Monroe County Tourist Development Council  
Julie Fondriest  
Chairman  
DAC 1  
PO Box 866  
Key West, FL 33041-0866

May 13, 2004

Dear Ms.. Fondriest:

I am writing to you in reference to the Key West Beaches and the District One Advisory Committee meeting scheduled for May 26, 2004. Randy Sterling, Parks & Recreation Director and I will represent the City of Key West at this meeting.

The City plans to renew its beach-cleaning contract with Robbie's Marina for a one-year period. The cost is \$138,140 per year. We are recommending that DAC1 fund this amount plus an additional \$45,000 to clean up the seaweed from below the high water mark and around the groins. The pictures of the seaweed problem are attached. If we do not clean this up the other option is to leave it there and having the bad smell for several weeks at a time. We are requesting your assistance in this matter. The City has been funding this operation but we are in desperate need of assistance from the TDC as our beaches are an attraction for our tourists.

The County is extending their contract of \$82,920 for the cleaning of Higgs Beach plus CPI for the same amount of time. The total county portion of the contract, for all three of their beaches, is \$114,801.82.

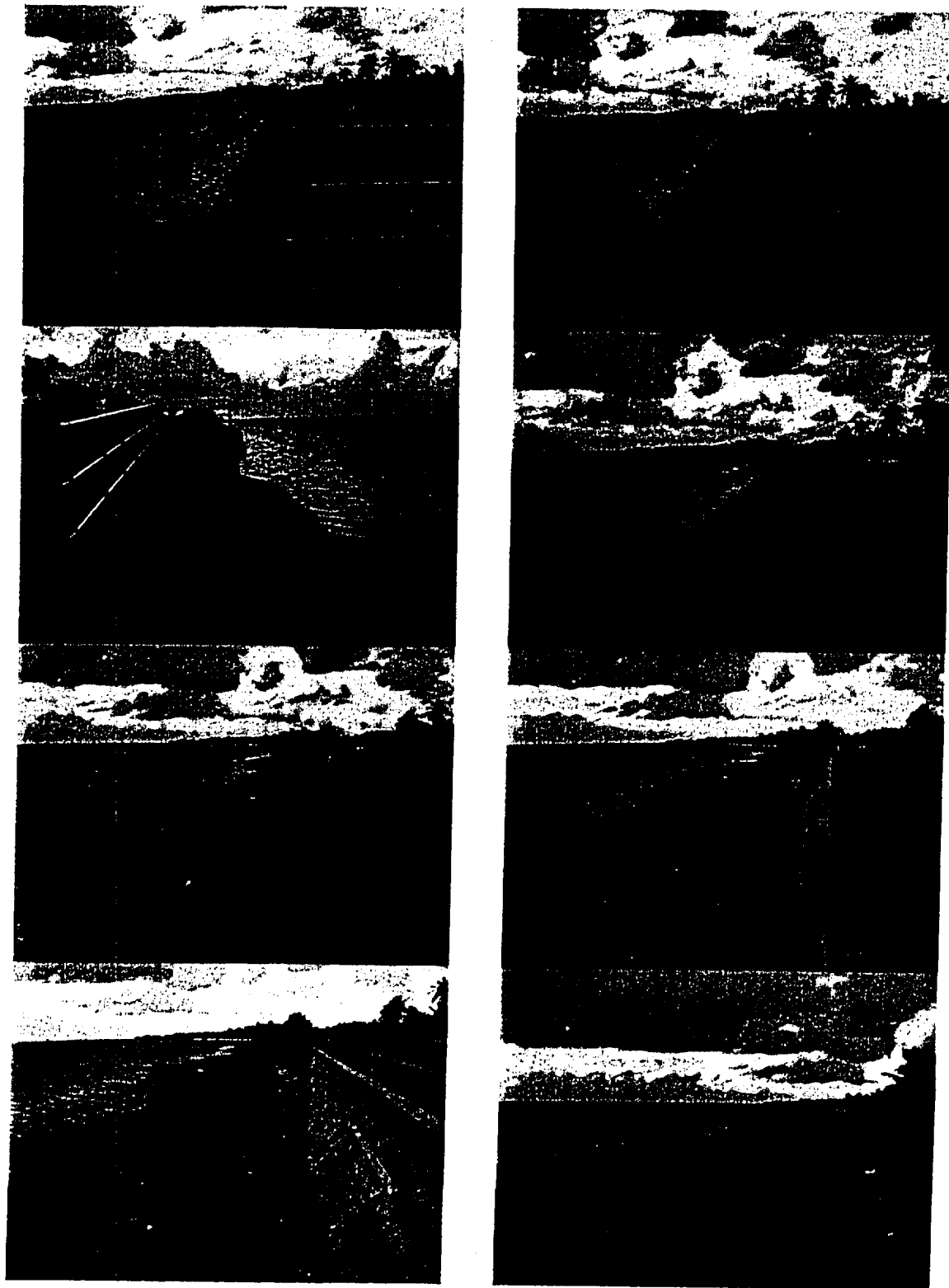
The City and the County bid together to get the best prices. We plan on going out for new bids in the fiscal year of 2005-2006.

We have spent millions of dollars with the TDC's help to re-nourish Smathers's Beach and the other city beaches. Our beaches have become nationally recognized and keeping them clean is a major help in attracting tourists to our island.

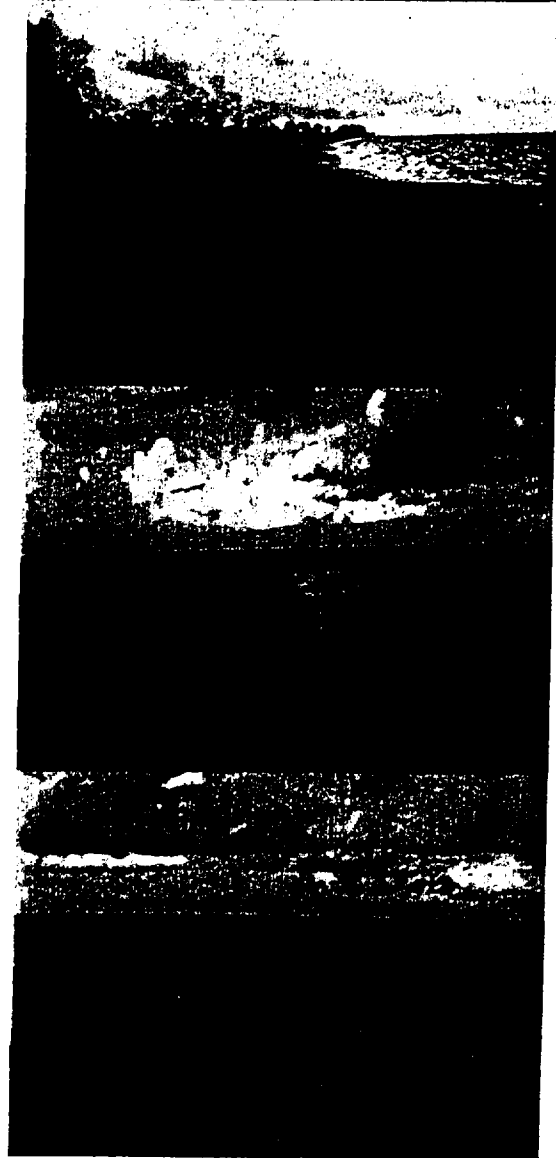
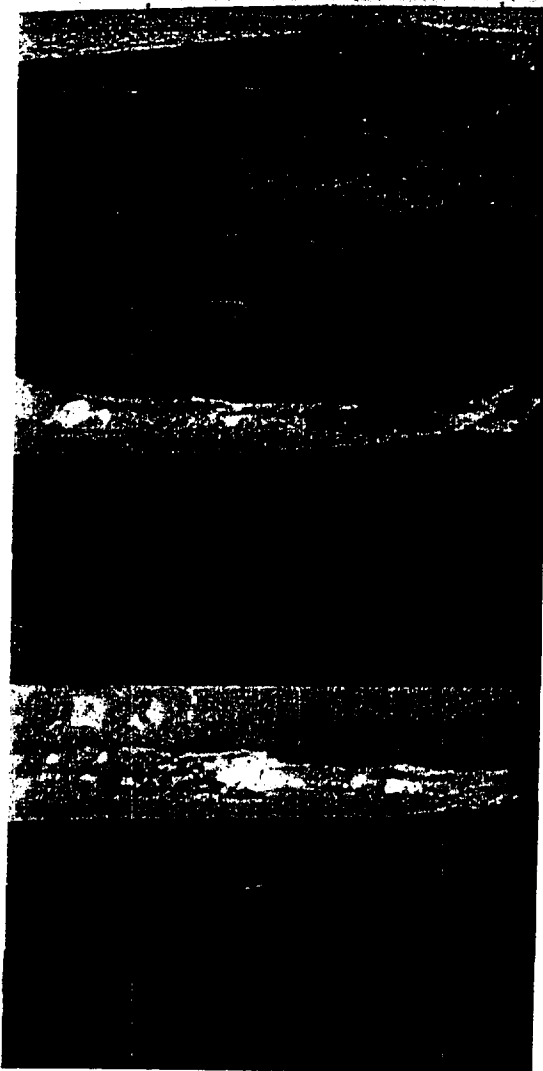
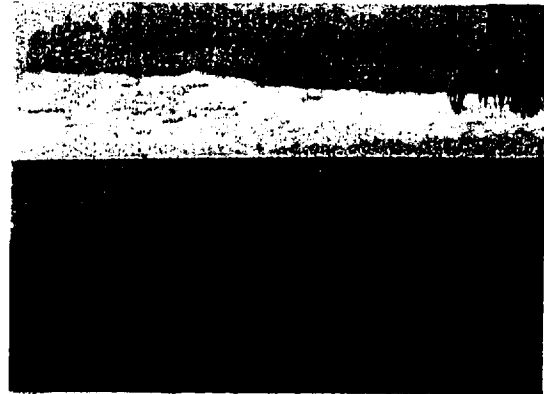
Sincerely,

John Jones  
Assistant City Manager

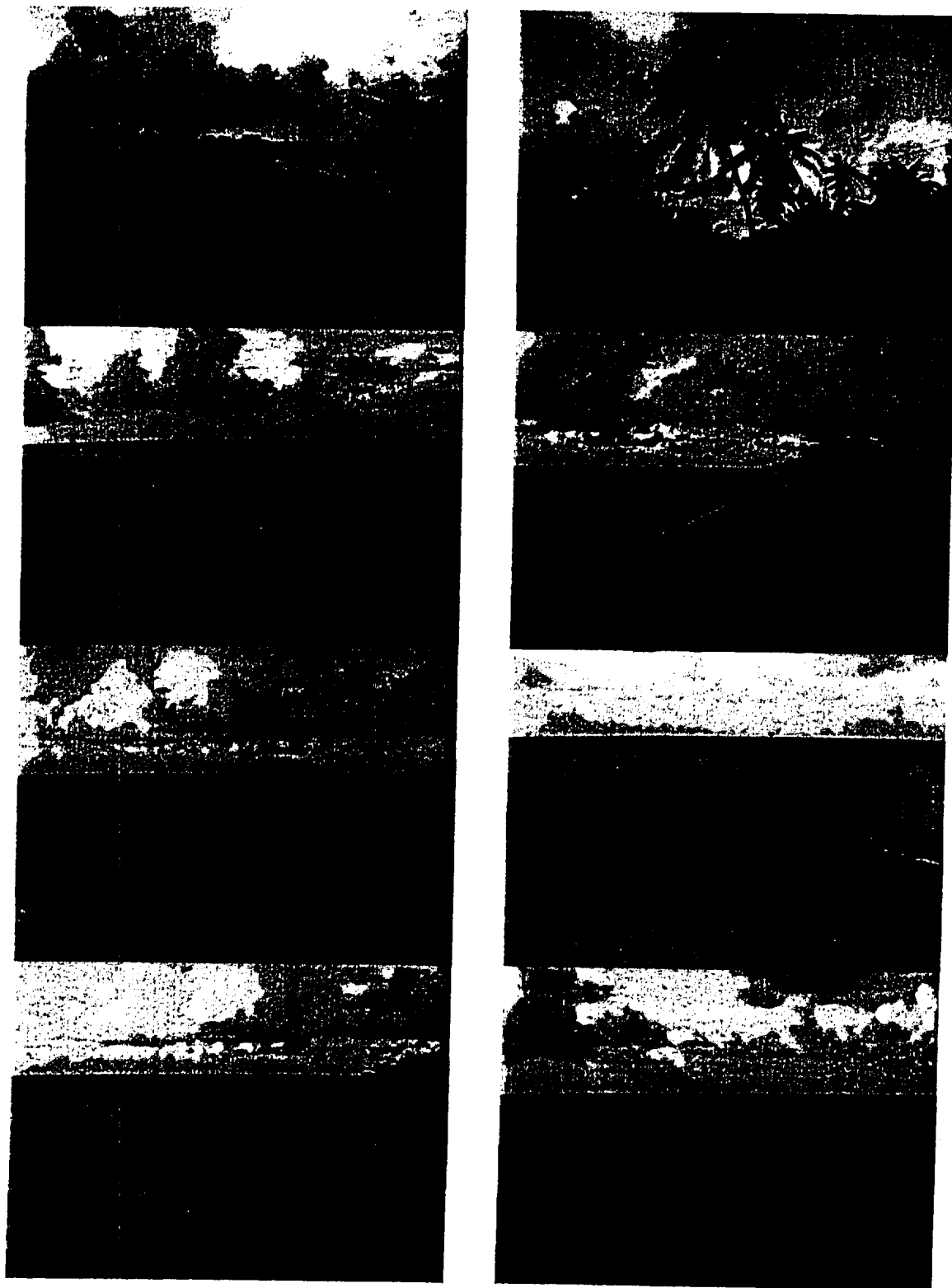
*Key to the Caribbean – Average yearly temperature  
77° F.*



Key to the Caribbean – Average yearly temperature  
77° F.

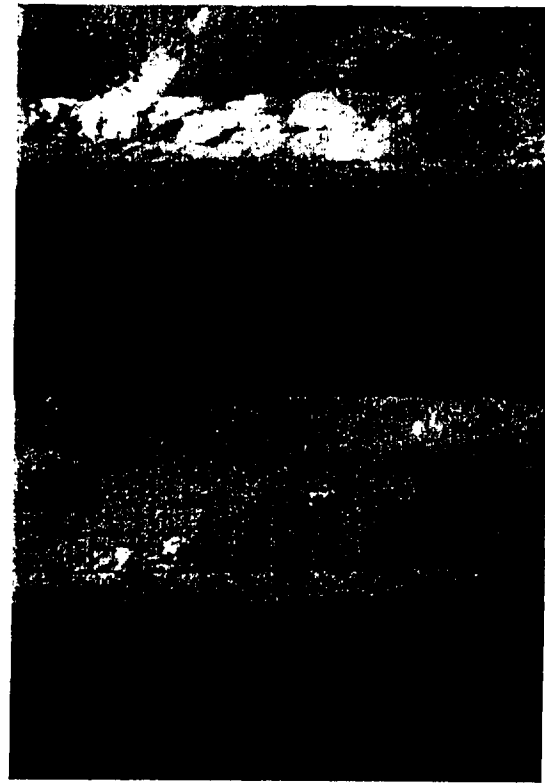
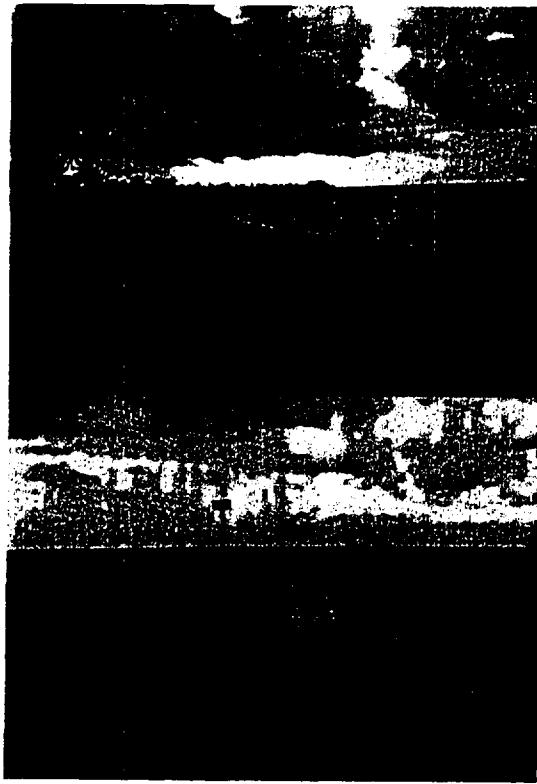


*Key to the Caribbean – Average yearly temperature  
77° F.*



*Key to the Caribbean – Average yearly temperature  
77° F.*





*Key to the Caribbean – Average yearly temperature  
77° F.*

**INTERLOCAL AGREEMENT  
FOR  
GRANT OF FUNDS**

This AGREEMENT dated the 20<sup>th</sup> day of Sept, 2001, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and The CITY OF KEY WEST, hereinafter "City".

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, or promote museums, zoological parks, fishing piers, nature centers or sports arenas which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, City has applied for funding for the Smathers and Rest Beach Cleaning project, hereinafter "the Project"; and

WHEREAS, City has the ability to act as manager for the project; and

WHEREAS, the County and TDC have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to maintain and rehabilitate Smathers and Rest Beaches; and

WHEREAS, the County and City have determined that it is in the best interest of both parties for the County to commit to a certain level of funding for beach cleaning services and the City to exercise complete control of its beaches by providing for the services either in-house or by contracting for same;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the City and the County have entered into this agreement on the terms and conditions as set forth below.

1. AGREEMENT PERIOD. This agreement is for the period commencing October 1, 2001 through September 30, 2004. This agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 11 and 12 below.

2. SCOPE OF AGREEMENT. The City shall provide beach cleaning and maintenance services for Smathers and Rest Beach. The City may fulfill this obligation through use of its own employees and/or by contracting with an independent contractor, in which case the City shall require sufficient professional licensure to meet any state or federal requirements, insurance coverage and hold harmless clauses protecting the County against any and all claims arising under this contract or any sub-contract, and City shall have sole responsibility for subcontract specifications and any oversight over the work product.

The City recognizes that its undertaking responsibility for beach cleaning and maintenance services replaces those services for which the County previously contracted for Smathers Beach from waters edge (the mean water line) to the edge of the bike/pedestrian walk (approximately 3,000 feet beach frontage) and up to the end of the wall on the eastern most portion, seven days a week, and for C.B Harvey/Rest Beach (approximately 800 feet beach frontage), seven days a week, including but not limited to: trash and debris removal, management of environmental hazards, erosion control and beach repair, coordination of all activities with the Florida Department of Environmental Protection, and notices to appropriate state agencies regarding any sea turtle nesting activity.

3. AMOUNT OF AGREEMENT AND PAYMENT. The County shall provide an amount not to exceed \$138,140 per year in reimbursement for the project. Payment shall be made in twelve (12) installments on a monthly basis. Payment will be made directly to City or contractor. If payment is made directly to City a cover letter must accompany a copy of paid invoice from the City showing that contractor has sufficiently performed scope of services. If payment is made directly to contractor, City should submit original invoice with documentation from City that scope of services has been sufficiently performed by the contractor. The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award. Payment for expenditures permissible by law and County policies shall be made through reimbursement to City upon presentation of invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC.

4. REPORTS. The City shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of the City to maintain appropriate records to insure a proper accounting of all funds and expenditures. The City understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the City will be billed by the County for the amount of the audit exception and shall promptly repay any audit exception.

5. MODIFICATIONS AND AMENDMENTS. Any and all modifications of the terms of this agreement shall be only amended in writing and approved by the TDC and by the Board of County Commissioners for Monroe County.

6. INDEPENDENT CONTRACTOR. At all times and for all purposes hereunder, the City is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed as to find the City or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

7. COMPLIANCE WITH LAW. In carrying out its obligations under this agreement, the City shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this agreement and shall entitle the County to terminate this agreement immediately upon delivery of written notice of termination to the Contractor.

8. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT. The City shall include in all agreements funded under this agreement the following terms:

a) Anti-discrimination. Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in Contractor. For breach or violation of this warranty, the City shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

c) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, county or city.

9. ANTI-DISCRIMINATION. The City agrees that they will not discriminate against any of their employees or applicants for employment or against persons for any benefit or service because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

10. ANTI-KICKBACK. The City warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

11. TERMINATION. This agreement shall terminate on September 30, 2004. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to City. The County may terminate this agreement without cause upon giving ninety (90) days written notice of termination to City. The

County shall not be obligated to pay for any services or goods provided by City after City has received written notice of termination.

12. **TERMINATION FOR BREACH.** The County may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by City shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions.

13. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between the City and the County.

14. **CONSENT TO JURISDICTION.** This agreement, its performance, and all disputes arising hereunder, shall be governed by the laws of the State of Florida, and both parties agree that the proper venue for any actions shall be in Monroe County.

15. **ETHICS CLAUSE:** City warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

16. **PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on a agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Contractor, supplier, sub-contractor, or consultant under a agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

17. **AUTHORITY:** City warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Contractor below certifies and warrants that the Contractor's name in this agreement is the full name as designated in its corporate charter (if a corporation); they are empowered to act and contract for the Contractor, and this agreement has been approved by the Board of Directors of Contractor or other appropriate authority.

18. **LICENSING AND PERMITS:** City warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

19. INSURANCE: The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims within the limitations of Florida Statute 768.28 and 440, arising out of the activities governed by this agreement. The City shall immediately give notice to the County of any suit, claim or action made against the County that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related to this agreement.

Each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

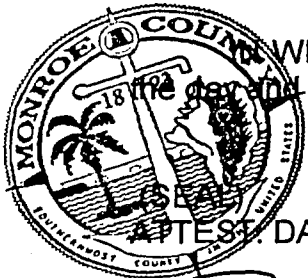
20. NOTICE. Any written notice to be given to either party under this agreement or related hereto shall be addressed and delivered as follows:

For City of Key West:

Julio Avael  
City Manager  
P.O. Box 1409  
Key West, FL 33040

For County:

Lynda Stuart  
Monroe County Tourist Development Council  
1201 White Street, Suite 102  
Key West, FL 33040  
and  
Suzanne Hutton, Asst. County Attorney  
310 Fleming St.  
Key West, FL 33040



WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the 18th day of August, 2001.

ATTEST: DANNY L. KOLHAGE, CLERK

By: [Signature]  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: [Signature]  
Mayor/Chairman

APPROVED AS TO FC  
AND LEGAL SUFFICIENCY

BY [Signature]  
SUZANNE A. HUTTON

DATE 8/24/01

(SEAL)  
ATTEST:

By: \_\_\_\_\_  
Secretary

By: [Signature]  
City Manager

Smathers and Rest Beach Cleaning Agreement